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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/669,988	09/24/2003	Donald E. Weder	8403.990	4227
30589	7590	09/15/2005	EXAMINER	
DUNLAP, CODDING & ROGERS P.C.			PALO, FRANCIS T	
PO BOX 16370			ART UNIT	
OKLAHOMA CITY, OK 73113			PAPER NUMBER	
			3644	

DATE MAILED: 09/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/669,988

Applicant(s)

WEDER, DONALD E.

Examiner

Francis T. Palo

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13, 15-27 and 29-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13, 15-27 and 29-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments, see **REMARKS**, filed 7/11/05, with respect to the rejection(s) of claim(s) 1-13, 15-27 and 29-40 under 35 U.S.C. 102(b), have been fully considered and are persuasive.

Therefore, in consideration of the as now amended independent claims and the newly added claims 41-44 citing a plant retaining space height range, the rejections have been withdrawn.

However, upon further consideration, a new ground(s) of rejection is made in view of newly found prior art reference US 4,837,971, necessitated by the claim amendments and newly submitted claims, which teaches;

"Because in the apparatus according to the present invention the plants are conveyed to the treatment area do not have to be accessible and thus can be made lower than the height of a man. This gives considerable savings in building costs.",
(column-4, lines 43-48).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Independent claims 1, 16, 37, 39 and new claims 41-44 are rejected under 35 U.S.C. 102(b), as being anticipated by Visser (US 4,837,971) 1989.

Regarding apparatus **claim-1**:

Visser teaches a low profile greenhouse as cited; specifically, a polygonal housing as cited, is readily apparent from the figures (especially figures 3-5).

Furthermore, Visser discloses; "*Because **in the apparatus** according to the present invention the **plants are conveyed** to the treatment area do not have to be accessible and thus **can be made lower than the height of a man**. This gives considerable savings in building costs.*",
(column-4, lines 43-48).

Therefore, Visser teaches a polygonal greenhouse having a height sufficiently short as cited and means for moving plants disposed therein as cited.

Regarding independent method **claim-16**:

The discussion regarding independent claim-1 is relied upon for the structure and means for moving plants disposed therein, as recited in the instant claim.

The method steps recited, specifically; providing, disposing, moving, feeding and watering, and removing plants are readily apparent from the figures and Abstract of Visser.

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Visser further discusses removable front walls in the growing areas and the movement of plants outside of the greenhouse (column-2, lines 23-36, or thereabout), as well as removal of the finished product.

Regarding independent **claims 37 and 38**:

The discussions above regarding independent claims 1 and 16 are regarded as encompassing the instant independent claims.

Regarding **new claims 41-44**:

The discussions above regarding the independent claims are relied upon.

The structure of Visser is readable on the limitation, "... is in a range of from about 2 feet to about 4 feet", as cited, and in consideration of the Visser teaching as follows;

*"Because in **the apparatus** according to the present invention the plants are conveyed to the treatment area do not have to be accessible and thus **can be made lower than the height of a man**. This gives considerable savings in building costs."*, (column-4, lines 43-48).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-13, 15, 17-27, 29-36, 38 and 40 are rejected under 35 U.S.C. 103(a), as being unpatentable over Visser (US 4,837,971) 1989, in view of Sumiyoshi et al. (US 5,394,646) 1995.

Regarding the remaining dependent claims:

The discussions above regarding the independent claims and the discussions regarding the dependent claims discussed in the non-final office action mailed 1/12/05 are relied upon.

Since the novelty of the instant invention is clearly pointed out and addressed in the discussions above regarding the amended independent claims and newly presented claims, and since the rejections of the pending unamended claims presented in the office action mailed 1/12/05 have not been traversed, the Examiner takes the liberty of rejecting those claims in blanket form, as obvious over Visser in view of Sumiyoshi, instead of addressing said claims individually in light of Visser alone, Visser further teaching a greenhouse more sophisticated than Sumiyoshi.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Francis T. Palo whose telephone number is 571-272-6907. The examiner can normally be reached on M-Tu.,Th.-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Francis T. Palo

Francis T. Palo
Examiner
Art Unit 3644